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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

ADIDAS AMERICA, INC., and
ADIDAS-SALOMON AG,

Plaintiffs,

v.

PAYLESS SHOESOURCE, INC.,

Defendant.

No. CV01-1655 KI (Lead Case)
Related Case CV03-1116 KI

**MEMORANDUM IN SUPPORT OF
MOTION TO EXCEED PAGE LIMIT FOR
DEFENDANT'S OPPOSITION AND FACT
RESPONSES TO PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT**

By Defendant Payless ShoeSource, Inc.

Pursuant to Local Rule 7.2

MEMO IN SUPPORT OF MOTION TO EXCEED PAGE LIMIT FOR DEF'S
OPPOSITION AND FACT RESPONSES TO PLFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT

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I. INTRODUCTION

Defendant Payless ShoeSource, Inc. (“Payless”), pursuant to LR 7.2(b), respectfully submits this Memorandum in support of its Motion for to Exceed Page Limit For Defendant’s Opposition to Plaintiffs’ Motion for Partial Summary Judgment.

II. ARGUMENT

Adidas previously sought Payless’ permission to allow it to 1) file its Memorandum in support of its Motion for Partial Summary Judgment in excess of the 35 page limit by 10-12 pages and 2) file its Concise Statement of Material Facts in excess of the 5 page limit by 2 pages. The reason adidas needed additional pages is that it moves on twelve (12) of Payless’ affirmative defenses and four (4) of Payless’ counterclaims, and could not fit all of its arguments into 35 pages. Payless consented, and adidas agreed to a similar expansion of the page limits with respect to Payless’ Opposition and factual Response. Adidas’ Memorandum, as filed, is 47 pages in length and its Concise Statement of Material Facts, as filed, is seven (7) pages.

After reviewing adidas’ Memorandum, it became clear to Payless that it would need more than the 47 pages taken by adidas to adequately respond to all of adidas’ arguments. As noted above, adidas moves on twelve of Payless’ affirmative defenses and four of its counterclaims. Rather than neatly segregating similar issues for the Court by filing two or three separate motions, however, adidas opted for an all-in-one approach. Given that adidas chose to conduct little, if any, discovery on most of Payless’ affirmative defenses and counterclaims, it was a relatively easy task for adidas to rattle through all of the different defenses and claims in 47 pages, largely asserting that there simply exists an absence of evidence. It is an entirely different matter for Payless to explain and reference (the already produced) evidentiary support for all of these claims in the same amount of page-space.

Had adidas chosen to split its motion into even two separate motions, Payless would have had 70 pages under the local rules to address all of these issues—and adidas still would have had

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ample opportunity to address Payless' Opposition arguments on reply. The issue of laches in particular is one well-suited to a stand-alone motion, given its significant importance in this case. Indeed, this is one of Payless' primary defenses to adidas' \$200 million claims and, as such, Payless' response on the issue constitutes the largest section of the Opposition; without it, Payless would be well within the standard 35 page limit. Payless segregated the issues on which it moved for summary judgment into five discrete motions (all of which fall short of the standard 35 page limit) in order to allow both parties to fully present their arguments and evidence, and to facilitate the Court's analysis.

Payless explained the foregoing facts to counsel for adidas and sought approval for an Opposition not to exceed 70 pages, consistent with its belief that adidas' Memorandum properly encompasses at least two separate motions. Adidas refused to consent, and agreed only to a 55-page Opposition. As such, Payless diligently attempted to trim its Opposition wherever possible, but the issues and the evidence are such that Payless still required 63 pages to fully brief the issues, eight more than the amount to which adidas consented. Payless was able to limit its Response to Plaintiffs' Concise Statement of Material Facts to seven pages, as agreed and consented to by counsel for adidas.

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III. CONCLUSION

In light of the global scope and number of issues in adidas' motion, the amount of evidence Payless marshaled in response, and Adidas' *\$200 million* damages claims in this action, it is not unreasonable to allow Payless to exceed by eight (8) the number of pages to which counsel for adidas has already consented. Payless has agreed in advance to allow adidas to a similar expansion of the page limits on reply should it need to do so. As such, Payless respectfully requests that the Court grant it permission to 1) file its Opposition to Plaintiffs' Motion for Partial Summary Judgment in excess of the thirty-five (35) page limit and 2) file its Response to Plaintiffs' Concise Statement of Material Facts in excess of the five (5) page limit.

DATED: July 16, 2007

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